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GAMING LAW

GOVERNMENTAL LAW

STRATEGIC CONSULTATION

March 26, 2003

SENT VIA FAX (360) 486-3625 & VIA US MAIL

Chairman George Orr
Washington State Gambling Commission
PO Box 42400
Olympia, WA 98504-2400

RE: WCCGA Petition for Rule Making

Dear Chairman Orr:

On behalf of the Washington Charitable and Civic Gaming Association (WCCGA), I attach a petition for rule making to amend WAC 230-20-059. This petition is intended to offer an alternative to the Gambling Commission's current proposal to remove the variance opportunity now afforded bingo licensees.

The current rule which allows a bingo licensee to petition the Commission in limited situations for variance from cash flow requirements was a result of an extensive negotiated rule making process three years ago. Since the enactment of the rule in April of 2001, not only has the world economy changed, but so too has the state's charitable gaming environment. An economic downturn, stock market collapse, terrorism, and increased competition for the gaming dollar have all played a significant role affecting the ability of bingo licensees to comply with the regulatory cash flow requirements established in 2001. This is evidenced by the recent report of your staff which indicated approximately one-fourth to one-third of the top forty bingo licensees are in violation of the current requirement.

Under the existing rule, licensees not meeting their cash flow requirements are to be given an opportunity to petition the Commission in limited circumstances for relief from regulatory sanctions, i.e. license revocation. This relief can be granted along with a self-

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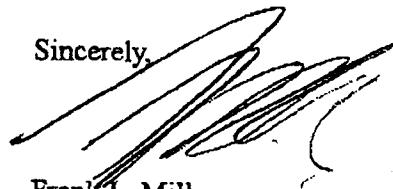
imposed plan to come into compliance over a period of time. Unfortunately, the current rule contains inconsistencies and ambiguities, and it has proven to be very burdensome to the Commission, and the Commission has recently proposed to eliminate the variance process.

The current agency proposal to maintain the rule, but remove the opportunity to seek a variance certainly simplifies the process. However, it places a great number of bingo licensees in jeopardy of losing their bingo license. In short, the proposed rule throws the baby out with the bath water. The rule fails to take into account the current economic problems that face bingo licensees and the incredibly competitive environment in which they must operate. In fact, organizations that made substantial amounts of money for their stated purpose, but still fail to meet the cash flow requirements would be facing revocation proceedings if the variance opportunity is eliminated. Such a result is not consistent with the public policy in this state of utilizing bingo as a fund raising mechanism for charitable and nonprofit organizations.

The petition submitted by the WCCGA is an attempt to preserve the opportunity to seek a variance from the current requirements. It is intended to set forth specific criteria upon which the director or an administrative law judge may grant a variance. If a variance is granted, the bingo licensee would have four calendar quarters to make substantial progress towards achieving compliance. If substantial progress is made, the licensee could be given two additional quarters to reach full compliance. If, at the end of that time, cash flow compliance was not achieved, then revocation proceedings would be initiated against the bingo licensee.

The WCCGA has attempted to submit a reasonable alternative to the agency's current proposal before you. It is intended to address the variance problem with a well reasoned compromise that places the decision of granting a variance with the director or an administrative law judge. It is also intended to create a window of opportunity for the nonprofit and charitable organizations in this state to work with the staff of the Gambling Commission to re-examine the nature and state of charitable gaming in light of the issues currently facing that industry. In that regard, the WCCGA respectfully requests the Commission file the WCCGA's alternative amendment to WAC 230-20-059 for further discussion and adoption.

Sincerely,



Frank L. Miller
Attorney for the
Washington Charitable
& Civic Gaming Association

FLM; jmh
Encl.



**PETITION FOR ADOPTION, AMENDMENT, OR REPEAL
OF A STATE ADMINISTRATIVE RULE (RCW 34.05.330)**

The Office of Financial Management (OFM) has adopted this form for members of the public who wish to petition a state agency to adopt, amend, or repeal an administrative rule (regulation). Full consideration will be given to a petitioner's request.

To obtain this form in an alternate format, call OFM at (360) 902-0555 or TTY (360) 664-9437.

Please complete the following:

PETITIONER'S NAME (PLEASE PRINT) Washington Charitable and Civic Gaming Association Attn: Frank Miller Law Firm		TELEPHONE NUMBER (INCLUDE AREA CODE) (253) 759- 9595		
STREET ADDRESS 4041 Ruston Way, Suite 1-D	PO BOX NUMBER	CITY Tacoma	STATE WA	ZIP CODE 98402
AGENCY RESPONSIBLE FOR ADMINISTERING THE RULE, IF KNOWN Washington State Gambling Commission		If unknown, call (360) 753-7470 for mailing information		

Please submit completed and signed form to the "Rules Coordinator" at the appropriate state agency. The agency will contact you within 60 days.

Check all that apply below and explain on the back of this form with examples. Whenever possible, attach suggested language. You may attach other pages, if needed.

I believe a new rule should be developed.

- ☐ The subject of this rule is:
- ☐ The rule will affect the following people:
- ☐ The need for the rule is

I believe this rule should be changed or repealed because (check one or more):

- ☐ It does not do what it was intended to do.
- ☐ It imposes unreasonable costs.
- ☐ It is applied differently to public and private parties.
- ☐ It is not clear.
- ☐ It is no longer needed.
- ☐ It is not authorized. The agency has no authority to make this rule.
- ☐ It conflicts with another federal, state, or local law or rule. Please list number of the conflicting law or rule, if known
- ☐ It duplicates another federal, state, or local law or rule. Please list number of the duplicate law or rule, if known

☒ Other (please explain): WAC 230-20-059 sets forth minimum cash flow requirements for charitable and non-profit bingo licensees. In limited circumstances, WAC 230-20-059 currently allows licensees to petition the Washington State Gambling Commission (WSGC) for a variance from enforcement of the rule when licensees are unable to meet the regulatory cash flow requirements of WAC 230-20-059. The WSGC has proposed to eliminate the variance provisions of WAC 230-20-059. The proposed amendment that forms the basis of this petition seeks to retain the variance protections, establishes



**PETITION FOR ADOPTION, AMENDMENT, OR REPEAL
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criteria for granting variances, sets a period in which the licensee is to achieve cash flow compliance, and transfers the responsibility for reviewing variance petitions from the five members of the Washington State Gambling Commission to either the Executive Director of the Washington State Gambling Commission or an Administrative Law Judge.

PETITIONER'S SIGNATURE

DATE

[Signature] Attorney for WCCGA

8/26/03

OFM 01

WAC 230-20-059 Minimum cash flow requirements for bingo games-- Contributions to stated purpose -- Sanctions. Bingo shall be conducted only as a social pastime or for fund-raising to support the stated purpose(s) of a charitable or nonprofit organization. Organizations licensed to conduct bingo games shall comply with the following procedures and limitations:

Contributions.

(1) To ensure that organizations licensed to conduct bingo games meet the intent of RCW 9.46.010 and provide funds adequate to promote charitable and nonprofit programs, such organizations shall not allow their bingo operation to award prizes or pay expenses to conduct bingo games that are excessive and all capital expenditures for the bingo operation that exceed six thousand dollars shall be specifically approved by the governing board.

An organization licensed to conduct bingo games shall ensure that the adjusted cash flow from the bingo operation available for its charitable and nonprofit programs is at least the following amount during each calendar quarter:

(a) For gross receipts above \$375,000 up to \$625,000 - 3% of gross receipts over \$375,000;

(b) For gross receipts above \$625,000 up to \$875,000 - \$7,500 plus 4% of gross receipts over \$625,000;

(c) For gross receipts above \$875,000 up to \$1,125,000 - \$17,500 plus 5% of gross receipts over \$875,000; and

(d) For gross receipts above \$1,125,000 - \$30,000 plus 6% of gross receipts over \$1,125,000.

Failure to meet the requirements of this subsection for any single calendar quarter shall not result in sanctions against the licensee.

Definitions.

(2) The following definitions shall apply to this section:

(a) "Gross receipts" shall mean the combined gross gambling receipts from bingo, pull-tab and punch board activities.

(b) "Adjusted cash flow from the bingo operation" shall mean the combined gross income of the bingo operation less all prizes and expenses, whether paid or accrued. For the purposes of computing expenses, depreciation or amortization, shall not be considered an expense of the bingo operation.

(c) "Bingo operation" shall mean bingo games and all associated activities conducted in conjunction with bingo games at the same location including punch boards, pull-tabs, raffles, snack bar, retail sales activities and rental of the bingo premises.

Sanctions for failing to maintain a positive adjusted cash flow.

(3) If a bingo licensee does not maintain a positive adjusted cash flow from the bingo operation during any two consecutive calendar quarters measured

independently, it shall be deemed to be operating primarily for gambling purposes. In this event, the director shall summarily suspend the organization's bingo license.

Sanctions for failing to meet adjusted cash flow requirements.

(4)(a) If a bingo licensee fails to meet the adjusted cash flow requirements of subsection (1) of this section when averaged over a period of any two consecutive calendar quarters, the licensee shall:

- (i) Develop a plan to gain compliance;
- (ii) Take immediate steps to reduce expenses and prizes paid and to increase income from all activities conducted in conjunction with the bingo game; and
- (iii) Report the plan and action taken to commission staff no later than sixty days after the end of the period. Such report shall be in writing and signed by the president or chief operating officer.

(b) If a bingo licensee fails to meet the adjusted cash flow requirements of subsection (1) of this section when averaged over a period of any four consecutive calendar quarters, subject to subsection (5) of this section, administrative action shall be taken to revoke the organization's bingo license: Provided, That adjusted cash flow requirements shall be waived adjusted if a for any-variance is granted under subsection (5) of this section. If a variance is not granted, the revocation proceeding shall be conducted pursuant to Chapter 230-50 WAC.

Petitions for variance.

(5) A bingo licensee that fails to meet the adjusted cash flow requirements of subsection (1) of this section when averaged over a period of any four consecutive calendar quarters, may petition the commission for a variance, in the following circumstances: The petition shall be heard by either the Director or at the Director's discretion, by an administrative law judge in accordance with Chapter 230-50 WAC. In order to qualify for a variance, the licensee must establish by a preponderance of the evidence that the failure to meet the adjusted cash flow requirements of this section resulted from one or more of the following:

~~(a) A licensee who fails to meet the adjusted cash flow requirements of subsection (1) of this section when averaged over a period of any four consecutive calendar quarters, but is within ten percent of those requirements, may petition the commission for a one-time variance based on their plans to gain compliance over the next four quarters.~~

~~(b) A licensee has a with long-term, legally binding financial obligations for its bingo facility as of the effective date of this rule, may petition the commission for a variance for a period of no more~~

~~than two years based on their plans to gain compliance within the two years. This variance shall be in the form of a reduction to the dollar amount of adjusted cash flow required by subsection (1) of this section.~~

- (a) The period of measurement included either the third or fourth quarter of 2002;
- (b) The inability to comply was temporary and due to unusual or unforeseen circumstances and the licensee has a history of complying with cash flow requirements;
- (c) The inability to comply was the result of increased competition by gambling operations within the licensee's geographic market; or
- (d) New legislation was enacted or other governmental action was taken during the measurement period which resulted in either an increase in operational expenses, a reduction in attendance, or a reduction in gambling income;

(6) A variance granted under this subsection shall be in the form of a waiver of the requirements of subsection (1) of this section, shall be for a period of four consecutive quarters and shall commence on the first day of the calendar quarter following the date the variance was granted.

(7) If during the term of the variance the licensee fails to maintain a positive adjusted cash flow for two consecutive quarters, the Director shall summarily suspend the organization's bingo license. A hearing shall be afforded the organization under WAC 230-50-010(6) with the only issue before the presiding officer being whether the licensee violated this subsection (7) of this section.

(8) At the conclusion of the variance, a determination shall be made by the Director of whether the licensee has come into compliance or has made substantial progress in meeting the cash flow requirements of this section. For purposes of this subsection, substantial progress shall mean that a licensee is within ten percent of its cash flow requirement under this section. If the Director determines that a licensee made substantial progress, the licensee shall be granted a one time variance extension for two quarters to achieve compliance with this section. If the Director determines that the licensee failed to make substantial progress during the initial variance or did not meet its cash flow requirements during the one time variance extension, the Director shall initiate revocation proceedings against the organization's bingo license. The hearing shall be conducted pursuant to Chapter 230-50 WAC. The issue before the presiding officer shall be limited to whether the licensee made substantial progress during the period of the initial variance or the variance extension.

[Statutory Authority: RCW 9.46.070, 01-05-020 (Order 397), § 230-20-059, filed 2/9/01, effective 4/1/01. Statutory Authority: RCW 9.46.070, 9.46.0209, 9.46.0237, 9.46.0205 and 9.46.075, 96-24-008 (Order 303), § 230-20-059, filed 11/21/96, effective 12/22/96.]